 ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Extension of the Sunset Date	)	
of the Structural, Non-Discrimination, and	)	CC Docket No. 96-149
Other Behavioral Safeguards Governing	)	
Bell Operating Company Provision of In-	)	
Region, Inter-LATA Information Services	)	

REPLY COMMENTS OF BELL ATLANTIC[1]

The three parties that supported CIX/ITAA's request to defer the sunset date for the separate affiliate requirement for interLATA information services fail completely to cure the fatal infirmities of that request. Accordingly, the request to extend the sunset date should be denied.

The few commenters who support CIX/ITAA's request merely repeat their argument that Congress intended the separate affiliate requirement to sunset only after industry-wide long distance relief. The express language of the Act proves otherwise. The sunset of the separate affiliate requirement for interLATA *information* services is expressly tied *only* to the date of enactment, *not* to grant of long distance relief, as the proponents claim. *See* 47 U.S.C. § 272(f)(2) (establishing a sunset date of "4 years after the *date of enactment* of the Telecommunications Act of 1996.") (emphasis added). This

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

contrasts sharply with the sunset for manufacturing and interLATA *telecommunications* services, which *is* tied to the date a Bell operating company receives long distance relief. *See* 47 U.S.C. § 272(f)(1) (establishing a sunset date of "3 years after the date such Bell operating company ... is authorized to provide interLATA telecommunications services under Section 271(d)"). The simple fact is that Congress consciously chose *not* to base the sunset for interLATA information services on long distance relief under section 271.

The supporters also raise vague allegations of potential anticompetitive conduct if the Bell companies are permitted to offer interLATA information services without being required to do so through a separate affiliate. But they never even try to show what that conduct might be or why retaining a separate affiliate requirement is necessary to prevent it. Moreover, they ignore the Commission's repeated finding since 1987 that the public interest is served by allowing the Bell companies to provide *intra*LATA information services on an integrated basis.[2] And they never even attempt to show why *inter*LATA information services should be treated any differently.

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[2] *See, e.g. Amendment of Section 64.702 of the Commission's Rules (Third Computer Inquiry),* 104 F.C.C.2d 958, ¶ 46 (1986) ("[I]nefficiencies and other costs to the public associated with structural separation significantly outweigh the corresponding benefits."); *Computer III Remand Proceedings,* 6 FCC Rcd 7571, ¶ 98 (1991) (non-structural safeguards "result[] in the wider availability of enhanced services to the public, while effectively ensuring that BOC participation in enhanced services does not adversely affect basic service rates or harm ESPs due to BOC anticompetitive conduct."); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, Further Notice of Proposed Rulemaking*, 13 FCC Rcd 6040, ¶ 36 (1998) (in the ten years since the Bell companies have offered information services without a separate affiliate requirement, information service competition "has continued to increase markedly as new competitive ISPs have entered the market").

AT&T, for example, baldly asserts that Congress intended that the sunset for interLATA information services should post-date long distance relief. AT&T at 1-3. As its only support, AT&T quotes Commission orders addressing *telecommunications*, not information, services – ignoring a dozen years of Commission orders finding that structural relief for information services is in the public interest. Moreover, AT&T's real interest here is apparent. The simple fact is that cable television providers, of which AT&T is the largest, not the Bell companies, dominate the broadband market, serving 80-90% of all broadband subscribers. For example, AT&T's high-speed Internet access competes directly with the Bell companies' similar information services. AT&T is here trying to saddle the Bell companies with a handicap that its own operations do not have.

The Telecommunications Resellers Association and Prism likewise add nothing of substance. Instead, they make similar vague, unsupported allegations of potential anticompetitive conduct that, like those of CIX/ITAA, are completely undocumented and entirely fallacious. Prism even goes so far as to claim that the information services market is not currently competitive. Prism at 5. The record here certainly proves otherwise. *See, e.g.*, BellSouth at 7-11, Bell Atlantic at 8-11. And even if the information services market were not competitive, it is not the Bell companies with their miniscule share that can exercise market power.

In contrast to the vague speculation of those who urge the Commission to retain a separate affiliate requirement, actual market experience proves that where the Bell companies have been permitted to participate in information services and other adjacent businesses free of a separate affiliate requirement, competition had flourished, output increased, and prices fell. For example, despite a dozen years of Bell company

competition without a separate affiliate requirement, the United States today is "the world's largest producer and consumer of information technology products and services."[3] Eight out of the top ten information services companies in the world are United States companies, and none is a Bell company.[4] Likewise, the CPE market, which has been open to the Bell companies since 1986 without a separate affiliate requirement, has continued to thrive. Revenues for voice messaging CPE (answering machines), which not only competes not just with Bell company-provided equipment but also with Bell company voice messaging information services, rose from $150 million in 1985 to an estimated $1.322 billion in 1995.[5] As a result, while a separate affiliate requirement imposes substantial costs, *see, e.g.* US West at 10-12, it provides no countervailing benefit.

In short, allowing the separate affiliate requirement for interLATA information services to sunset on the date set in the Act is fully consistent with the statute and Congressional intent and with more than a decade of the Commission's own findings.

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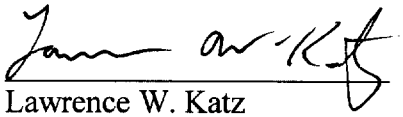
[3] United States Department of Commerce, DRI/McGraw-Hill, and Standard and Poor's, *U.S. Industry & Trade Outlook '99* at 26-1.

[4] *Id.* at 26-4.

[5] 1993-1994 NATA Telecommunications Market Review and Forecast at 171.

None of the parties has presented any valid argument otherwise. The Commission should deny CIX/ITAA's request.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 1999, copies of the foregoing "Reply Comments of Bell Atlantic" were sent by first class mail, postage prepaid, to the parties on the attached list.

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* Via hand delivery.

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